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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. **R. S .A. No. 3679 of 2003**
Date of decision: 14.12.2007

Gokal Chand **...Appellant**

Versus

Gordhan and others **...Respondents**

2. **R. S .A. No. 5847 of 2003**

Sukhan **...Appellant**

Versus

Gordhan and others **...Respondents**

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Suvineet Sharma, Advocate for the appellant
in appeal No.3679 of 2003)

None for the appellant in appeal No.5847 of 2003

Mr. Ashish Aggarwal, Advocate for respondents No. 1 and 2
in both appeals.

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RAJESH BINDAL, J.

This order will dispose of two appeals bearing Regular Second Appeals No. 3679 and 5847 of 2003 arising out of same judgment and decree passed by the Courts below, in one suit.

Before the facts in detail are narrated and issues raised by the parties are dealt with, it is necessary to record that at the time of preliminary hearing, learned counsel for the appellant got the notice issued in the present appeal by citing judgment of Hon'ble the Supreme Court in **Jugraj Singh and another Vs, Labh Singh and others 1995 (2) Supreme Court Cases 31**, which already stood overruled in **Ram Awadh (Dead) by LRs. and others Vs. Achhaibar Dubey and another 2000 (2) Supreme Court**

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Cases 428. Meaning thereby that even notice was got issued in the present appeal by misleading the Court. Though, this independently is enough to non-suit the appellant, however, still the merits of the appeal are considered.

The present appeals arises out of a suit filed by the plaintiff for specific performance with consequential relief of decree for possession, which was decreed by the trial Court, however, learned Lower Appellate Court reversed the same.

The claim set up by the appellant/plaintiff was that respondent no.3/defendant no.1 agreed to sell to the appellant/plaintiff, the land in dispute for a sum of Rs. 40,000/- vide agreement dated July 30, 1982. The sale deed could not be executed for the reasons that certain loan amount was required to be cleared for which the land in question was mortgaged. The agreement for sale was subsequently renewed and finally on June 30, 1983. a fresh agreement was executed in which no definite date for execution of the sale deed was fixed, however, it was stated therein that duty to clear the loan would be of the appellant/plaintiff/vendee and whenever he clears the loan, the sale deed can be got executed. It is alleged that on May 17, 1988 the appellant cleared the loan, however, still when the sale deed was not executed a suit for specific performance was filed on March 26, 1990. It is further pleaded that out of the total sale consideration of Rs. 40,000/-, Rs. 10,000/- was paid as earnest money whereas another Rs. 5,000/- was paid on March 16, 1982. A sum of Rs. 20,234/- was paid when fresh agreement was executed on June 30, 1983 and the balance sum of Rs. 5766/- was required to be paid to the Palwal Land Development Bank, Palwal on account of loan standing against the vendor. In the meantime, on May 17, 1988 the land in question was sold by respondent no.3/defendant no.1 in favour of respondents No.1, 2 and 5. The sale deed in their favour was also challenged.

The trial Court decreed the suit. However, learned Lower Appellate Court found that plea set up by the appellant/plaintiff was false. It is admitted case of the appellant/plaintiff that in terms of the last agreement dated June 30, 1983, it was his duty to clear the loan amount and get the

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sale deed executed. As is evident the loan amount was meager still there is nothing on record even up to the alleged date i.e. May 17, 1988 that the appellant/plaintiff cleared the loan of the bank. The oral statement of appellant/plaintiff regarding clearance of loan on May 17, 1988 was not substantiated as no receipt thereof was produced by the appellant rather the case of respondents no.1, 2 and 5 was that infact they had cleared the loan. There is nothing on record produced by the appellant to show that after the alleged clearance of loan on May 17, 1988, he ever issued any notice to the vendor for execution of the sale deed by intimating him of clearance of loan. The reason for filing of suit nearly after two years of alleged date of clearance of loan is not forthcoming especially when allegedly entire sale consideration had been paid. Further the appellant admitted in his statement that within two months of the execution of the sale deed in favour of respondents no.1,2 and 5 regarding the same property, the appellant came to now about the same, however, still he took about two years to seek specific performance of the agreement and challenge the sale deed.

The stand of the appellant to the effect that after payment of the entire amount, he was put in possession of the suit land was also found to be wrong. From a perusal of the revenue record produced on record and the statement of counsel for the appellant before the Court that till date possession of the land was with the vendor Sukhan even that stand was belied.

With this material placed by the appellant/plaintiff on record, which did not inspire confidence, in my view, learned Lower Appellate Court had rightly reversed the judgment and decree of the trial Court.

No substantial question of law arises in the present appeal and the same is dismissed.

December 14 , 2007 **(Rajesh Bindal)**
Pka **Judge**